

SERVICE DATE – APRIL 29, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 914X

McCLOUD RAILWAY COMPANY–ABANDONMENT AND DISCONTINUANCE OF
SERVICE EXEMPTION–IN SISKIYOU, SHASTA, AND MODOC COUNTIES, CAL.

Decided: April 28, 2016

By decision served on October 14, 2005, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by McCloud Railway Company (MCR) of approximately 80 miles of rail line in Siskiyou and Shasta Counties, Cal., and the discontinuance of service provided under a grant of trackage rights over a 31.4-mile line owned by BNSF Railway Company in Siskiyou and Modoc Counties, Cal.¹ The Board granted the exemption subject to standard employee protective conditions and several environmental conditions.² The abandonment exemption became effective on November 20, 2006.

By decision and notice of interim trail use or abandonment (NITU) served on December 29, 2009, the proceeding was reopened and was modified to implement interim trail use/rail banking, under the National Trails System Act (Trails Act), 16 U.S.C § 1247(d), and 49 C.F.R. § 1152.29. The NITU authorized a 180-day period for SAVE BURNEY FALLS (SBF) to negotiate with MCR for interim trail use on the above-described rail line. The NITU expired by its own terms on June 28, 2010.

By decision and notice served on October 4, 2011, the proceeding was reopened, the consummation deadline was extended to the service date of the decision and notice, and a new NITU was issued that permitted SBF to continue to negotiate a final agreement with MCR for a period of 180 days, until April 1, 2012.

¹ The 80 miles of rail line include: (1) a rail line between milepost 3.3 east of McCloud and the end of the track at milepost B-61 at or near Burney; (2) a rail line between milepost B-19 at or near Bartle and milepost B-31.4 at or near Hambone; (3) a rail line between milepost B-58 at or near Berry and milepost S-7 at or near Sierra; and (4) a rail line between milepost B-31.6 at or near Bear Flat and milepost P-3.93 at or near Pondosa.

² The Board removed an historic preservation condition in a decision served on November 6, 2009. The remaining environmental conditions involve notification and consultation requirements that relate to salvage, and, while still in effect, they are not a bar to consummating the abandonment.

On April 23, 2012, Shasta Land Trust (SLT) and SBF filed separate requests for the Board to reopen the proceeding, vacate the existing NITU, and issue a replacement NITU substituting SLT as the new interim trail sponsor in place of SBF. By decision served on June 18, 2012, a replacement NITU applicable to SLT as the interim trail sponsor was issued effective on the June 18 service date.

On April 7, 2016, SLT and the Great Shasta Rail Trail Association (GSRTA) filed a joint petition requesting that the Board reopen the proceeding, vacate the existing NITU served June 18, 2012, and issue a replacement NITU substituting GSRTA as the new interim trail sponsor in place of SLT. The petition states that SLT owns the right-of-way and is transferring all right, title, and interest it holds to GSRTA. GSRTA states that MCR has been served a copy of the petition.³ No objection was filed to the substitution request.

As required by 49 C.F.R. § 1152.29, GSRTA has submitted a statement indicating its willingness to assume full responsibility for: (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way. GSRTA acknowledges that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Accordingly, the request will be granted and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on June 18, 2012, is vacated.
3. A replacement NITU applicable to GSRTA as interim trail sponsor is issued, effective on the service date of this decision and notice.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new sponsor's continuing to meet the financial obligations for the right-of-way.
5. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

³ Although the petition states that the right-of-way is owned by SLT and will be transferred to GSRTA, there is no indication that the right to reinstitute service and the residual common carrier obligation associated with that right have been transferred from MCR. For that right to be transferred, Board authority to acquire the rail line under 49 U.S.C. § 10901 would be required. See King Cty., Wash.—Acquis. Exemption—BNSF Ry., FD 35148 (STB served Sept. 18, 2009).

6. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.